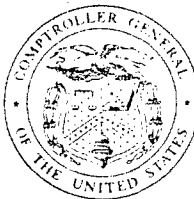


**DECISION**



*18222*  
*Wierhoff*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-199636

DATE: May 27, 1981

MATTER OF: Harris Systems Pest Control, Inc.

**DIGEST:**

1. Protest of determination to award sole-source hospital aseptic management services (HAMS) contract to incumbent contractor for one-year period after substantial expansion of medical center is denied where agency reasonably determined that its staff could not oversee both relocation into expanded facilities and change of HAMS contractors without jeopardizing center's mission and patients' health.
2. GAO does not review decision whether to set aside procurement under section 8(a) of Small Business Act unless there is showing of fraud or bad faith by Government officials.
3. Claim for costs of preparing unsolicited proposal in response to solicitation issued to another firm on sole-source basis is denied where sole-source decision was justified and claimant thus could not have been awarded contract in any case.

Harris Systems Pest Control, Inc. (Harris) protests the Air Force's award of a sole-source contract for hospital aseptic management services (HAMS) at Wilford Hall Air Force Medical Center at Lackland Air Force Base, Texas, and the Air Force's refusal to consider Harris' unsolicited proposal submitted under the sole-source solicitation (No. F33600-80-R-0382). HAMS are cleaning services which include aseptic services to prevent infections. Since the medical facility recently underwent renovation and expansion, the Air Force determined that its existing staff could not safely oversee both the necessary relocation of facilities and a change of HAMS contractors without jeopardizing the success of Wilford Hall's mission and the health of its patients. Therefore, the Air Force determined to negotiate a sole-source

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contract with the incumbent contractor, ServiceMaster Industries, Inc., covering the period until the relocation is completed.

We deny the protest, and also a claim for proposal preparation costs, because the Air Force's determination was reasonable.

After publishing a synopsis in the Commerce Business Daily announcing its intention to competitively procure the HAMS services for the 1981 calendar year, the Air Force reevaluated its needs. According to the Air Force, the recently completed construction, which more than doubled the size of the facility and renovated some of the original areas, will require a major relocation over the next several months that its staff will have to oversee. The Air Force further reports that past experience indicates that under normal circumstances even an experienced HAMS contractor requires a phase-in period of five months and that such a period places a heavy burden on the Wilford Hall staff. Believing that only the current contractor could continue HAMS on an uninterrupted basis at the required level of proficiency without the need for Air Force staff involvement in phase-in activities, the Air Force determined to negotiate a contract with ServiceMaster for calendar year 1981 -- during which time the relocation will be completed -- and to postpone conducting a competitive procurement until the following year.

The protester learned of the sole-source determination and attempted to submit an unsolicited proposal. However, the Air Force refused to consider it, returning it unopened.

The primary issue in this protest is whether the Air Force reasonably determined that only the incumbent contractor could provide HAMS to meet the agency's 1981 need. Sole-source awards are authorized in circumstances when needed supplies or services can be obtained from only one person or firm. For example, there may be only one source because items or services needed are unique; time is of the essence and only one known source can meet the Government's needs within the time available; data which would be needed to permit a competitive procurement is unavailable and cannot be obtained within the time available; or only a single source can provide an item which must be compatible

or interchangeable with existing equipment. Precision Dynamics Corporation, 54 Comp. Gen. 1114 (1975), 75-1 CPD 402. Because of the general requirement to obtain competition to the maximum practical extent, a sole-source determination is subject to close scrutiny by this Office. However, the standard of review applied by this Office is one of reasonableness; unless it can be shown that the contracting agency acted without a reasonable basis, our Office will not question the decision to procure on a sole-source basis. Federal Data Corporation, 59 Comp. Gen. 282 (1980), 80-1 CPD 167.

The protester, which has the burden of showing that the agency's decision was unreasonable, CPT Corporation, B-200551, December 29, 1980, 80-2 CPD 444, states that it is a qualified HAMS supplier, that its management has experience dealing with changing conditions at a larger medical facility than Wilford Hall, and that it planned to employ the incumbent contractor's employees at the job site. Therefore, argues Harris, there would have been no diminution in the quality of service or an interruption in service if Harris had been awarded the contract.

We believe that the protester has failed to show that the Air Force's sole-source determination was unreasonable. We view the Air Force's conclusion that a change of HAMS contractors would pose inordinate risks to the proper functioning of the medical center and to its patients as a critical factor. Although Harris might have been able to employ the incumbent's service employees at Wilford Hall, Harris has not shown that, contrary to the Air Force's experience with HAMS contractors, Harris' management could immediately gain sufficient familiarity with the medical facility and assume the necessary working relationship with the incumbent employees and the staff of Wilford Hall to effect the necessary HAMS quality without the close supervision from Air Force staff normally required during a phase-in period. In this respect, we have recognized that HAMS often involve crucial health concerns, demanding the highest possible aseptic environment. See Tidewater Protective Services, Inc. and others -- reconsideration, 56 Comp. Gen. 649 (1977), 77-1 CPD 361. Consequently, we are not prepared to question the Air Force's judgment that a change of HAMS contractors for 1981 would introduce an unacceptable risk to the medical center's mission and to the safety of its patients. See Hughes Aircraft Company, 53 Comp. Gen. 670, 676 (1974) 74-1 CPD 137; R&E Cablevision, B-199592, February 19, 1981, 81-1 CPD 110. (Of course, we are not condoning the noncompetitive

procurement of HAMS generally, but only under the specific circumstances of this case.)

Concerning the Air Force's refusal to consider Harris' unsolicited proposal, while generally there is a duty to consider unsolicited proposals, see Metal Art, Inc., B-192901, February 9, 1979, 79-1 CPD 91, Harris was not prejudiced since the Air Force's sole-source determination was reasonable and Harris would not have received the award in any event.

In addition to the grounds of protest discussed above, Harris also protests that the sole-source solicitation contained an unduly restrictive experience requirement; that ServiceMaster's proposal in response to the sole-source RFP was submitted after the time specified and thus must be rejected; and that the Air Force should have procured the services from a socially and economically disadvantaged small business concern through a contract with the Small Business Administration under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (Supp. III 1979).

Harris was not prejudiced by the solicitation's experience requirement (that the contractor have had 24 months of HAMS experience within the 36 months prior to the date for proposal receipt), or the Air Force's acceptance of ServiceMaster's allegedly late proposal, since in view of our finding that the Air Force reasonably determined to negotiate a sole-source contract with ServiceMaster, Harris could not compete for the contract in any event. See Rack Engineering Company; Deluxe-Lista Corporation, B-194470, November 30, 1979, 79-2 CPD 385 at pp. 6-7.

Finally, section 8(a) of the Small Business Act authorizes the Small Business Administration (SBA) to enter into contracts with any Government agency with procuring authority and to arrange the performance of such contracts by letting subcontracts to small businesses or other concerns. The contracting officer or the procuring agency is authorized "in his discretion" to let the contract to SBA. In light of that discretionary authority, we do not review agency determinations to set aside or not to set aside contracts for noncompetitive section 8(a) award, unless there is a showing

of fraud or bad faith on the part of Government officials. Thus, agency decisions not to enter into section 8(a) contracts generally are not matters for legal review by this Office under our bid protest function. Jazco Corporation, B-197550, February 13, 1980, 80-1 CPD 132.

The protest is denied.

We also deny Harris' claim for the costs of preparing the unsolicited proposal which the Air Force refused to consider. An essential element of recovery of proposal preparation costs is a showing that the claimant had a substantial chance of being awarded the contract. See Decision Sciences Corporation -- Claim for Proposal Preparation Costs, B-196100.2, October 20, 1980, 80-2 CPD 298. Since the Air Force's sole-source determination was reasonable, Harris was not entitled to the contract and thus was not harmed by the agency's refusal to consider the unsolicited proposal.

*Milton J. Arslan*

Acting Comptroller General  
of the United States